THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 1463 of 2006

O r d e r:

Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner filed the present writ petition, praying for the following relief:

> To issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus directing the 1st respondent to forthwith take steps to fill up the post of Vice Chairman and Managing Director of A.P. Mineral Development Corporation Limited by considering the claims of the petitioner with all consequential benefits and pass such other order or orders as this Hon'ble Court may deem fit and proper.

The petitioner claims that he joined the service of the Government of Andhra Pradesh as Assistant Geologist in 1973. Presently, he is working as Joint Director in A.P. Mineral Development Corporation Limited (hereinafter referred to as 'the Corporation'), which the petitioner claims is the sister concern of Department of Mines and Geology. The petitioner claims that he is the senior-most person in the Corporation, but the respondents ignoring his seniority, promoted one Mr. V.D. Rajagopal, as Director of Mines and Geology. The petitioner states that he being the senior-most person in the Corporation, is entitled to be appointed as Vice-Chairman and Managing Director of the Corporation, but the respondents without considering his claim, have asked Mr. V.D. Rajagopal, to hold the additional charge of Managing Director of the Corporation, which the petitioner contends, would not be in public interest.

The learned counsel for the petitioner submits that the petitioner, who is holding the post of Joint Director is the senior-most person in the Corporation, and he being the senior-most person, is entitled to be

promoted as Director of Mines and Geology, but the respondents ignoring his seniority, have promoted one

Mr. V.D. Rajagopal to the said post. Be that as it may, he submits that the post of Vice-Chairman and Managing Director of the Corporation had fell vacant, but the respondents without filling the said post by a regular incumbent, have asked Mr. V.D. Rajagopal to hold additional charge of Vice-Chairman and Managing Director of the Corporation. He submits that the petitioner being the senior-most person is entitled to be appointed as Vice-Chairman and Managing Director, but the action of the respondents in asking Mr. V.D. Rajagopal to hold additional charge of the post of Vice-Chairman and Managing Director, is not in public interest. He thus prayed that the respondents be directed to take steps to fill up the post of Vice-Chairman and Managing Director, and consider his case for promotion to the said post.

Respondent Nos. 1 and 2 filed separate counters. Both the learned Government Pleader for Industries representing respondent No.1-Government of Andhra Pradesh and the learned Standing Counsel for respondent No.2-Corporation reiterating the counter averments submitted that respondent No.2-Corporation is not the sister concern of the Department of Mines and Geology. Though the Corporation is wholly owned by the Government of Andhra Pradesh, yet it is a distinct and separate commercial organization different from the Government Department. They submitted that the petitioner is not senior to Mr. V.D. Rajagopal, and as per the rank assigned by APPSC, he is junior to Mr. V.D. Rajagopal, and the fact that the petitioner is not senior to Mr. V.D. Rajagopal, is evident from the fact that the applications in O.A. Nos. 7808 of 2001 and 6569 of 2003 filed by the petitioner claiming seniority over Mr. V.D. Rajagopal, was dismissed by the A.P. Administrative Tribunal vide its orders dated 06.10.2005.

They submitted that as to who should be appointed as Vice-

Chairman and Managing Director of the Corporation is the prerogative of the Government of Andhra Pradesh, and the petitioner cannot claim to have any right to seek his appointment to the said post. They submitted that as per Clause 64(2)(a) of the Articles of Association of the Corporation, the Board of Directors, including the post of Vice-Chairman and Managing Director, are appointed for a specific period, and the Government is empowered to remove them without assigning any reason whatsoever. They submitted that the post of Vice-Chairman and Managing Director is an ex-cadre post, and the petitioner cannot claim appointment to the said post, and more so when appointment to the said post is made keeping in view the capability and competency of the person to hold the post. They submitted that the track record of the petitioner is not clean, he has been suspended and reinstated on several occasions. They submitted that the petitioner has been transferred and placed at the disposal of the Tribal Welfare Department, and as such, he can neither claim to be an employee of the Corporation nor claim promotion. They submitted that Mr. V.D. Rajagopal is not the full-time Vice-Chairman and Managing Director, he has been only asked to hold additional charge until further orders.

Heard the learned counsel for the petitioner, the learned Government Pleader for respondent No.1-Government of Andhra Pradesh and the learned Standing Counsel for respondent No.2-Corporation, and perused the material papers.

Though the petitioner claims that he being the senior-most person in the Corporation, was entitled to be appointed as Director of Mines and Geology, the fact remains, one Mr. V.D. Rajagopal, who was appointed to the said post, was said to be senior to the petitioner as per the rank assigned by APPSC. The fact that the petitioner is not senior to Mr. V.D. Rajagopal, came to be decided when the O.A.
Nos. 7808 of 2001 and 6569 of 2003, filed by him claiming seniority over

the said Mr. V.D. Rajagopal, were dismissed by the A.P. Administrative Tribunal, vide its orders dated 06.10.2005. The writ petitions filed by the petitioner assailing the orders of the A.P. Administrative Tribunal, are said to be pending before this Court, and therefore, without expressing any opinion on whether the petitioner is senior or junior to Mr. V.D. Rajagopal, it may be noticed whether the petitioner can claim appointment to the post of Vice-Chairman and Managing Director, which the respondents contend is an *ex-cadre* post and which post one Mr. V.D. Rajagopal, was asked to hold additional charge.

The post of Vice-Chairman and Managing Director of the Corporation is normally said to be filled up by an I.A.S. Officer. It is said to be an *ex-cadre* post. Though in the past several Technocrats, were said to have been appointed as Vice-Chairman and Managing Director, the fact remains, in Government considered their capability and competency, to hold the post. At any rate, it is the case of the respondents that the post of Vice-Chairman and Managing Director, being an *ex-cadre post*, cannot be filled up by promotion, and as to who should be appointed to the said post, is the discretion and prerogative of the Government. To consider whether it is the prerogative of the Government to appoint the Board of Directors, including the Chairman, it is relevant to extract Clause 64(2)(a) of the Articles of Association of the Corporation, which deals with appointment of Board of Directors, including the Chairman reads:

> The Directors including the Chairman shall be appointed by the Government and they are subject to such terms and conditions and the term of Directors including the Chairman other than Vice-Chairman and Managing Director shall be for a period of three years from the date of appointment. The Government shall have power, from time to time to remove all or any of the Directors from the office, including the Chairman, Vice-Chairman and Managing Director, Executive Director or other Director by whatever designation appointed without assigning any reasons whatsoever and in the event of such removal or in the event of any vacancy in the office of the Directors caused by resignation, death or otherwise, the Government shall be entitled to appoint another in such a vacancy.

A reading of the aforesaid clause makes it amply clear that power

to appoint Directors, including the Chairman, (Vice-Chairman being lower than Chairman, cannot be an exception) is vested in the Government. Except the post of Vice-Chairman and Managing Director, all other Directors, including the Chairman, have a fixed tenure of three years. However, before the expiry of three year period, the Government is empowered to remove all or any of the Directors, including the Chairman, Vice-Chairman and Managing Director, Executive Director or other Director by whatever designation appointed, without assigning any reasons whatsoever. Inasmuch as the power to appoint the Directors, including the Chairman, is vested in the Government, it is for the Government to decide as to who is the person competent and capable to hold the post of Vice Chairman and Managing Director. In the appointment to the post of Directors, Chairman and Vice-Chairman, seniority does not have any role to play, and more so when the said posts are said to be ex-*cadre* posts. Therefore, mere seniority of the petitioner in the Corporation, does not confer upon him any right to claim appointment as Vice-Chairman and Managing Director.

Be that as it may, the Government had merely asked Mr. V.D. Rajagopal, to hold the additional charge of Vice-Chairman and Managing Director, for the time being. The said appointment of Mr. V.D. Rajagopal to the post of Vice-Chairman and Managing Director being a stop-gap arrangement, until a regular incumbent is appointed, which normally is made to ensure that the administration does not come to a standstill, no exception can be taken to the action of the respondents in asking Mr. V.D. Rajagopal, to hold additional charge of Vice-Chairman and Managing Director.

It is the contention of the counsel for the petitioner that the Government cannot keep the post of Vice-Chairman and Managing Director vacant and run the administration of the respondent-corporation under the leadership of an in-charge Vice-Chairman and Managing

Director, for it would not be in the best interest of the respondent-corporation, and therefore, they should be directed to fill up the said post immediately. No direction as prayed for by the petitioner can be given. However, it is always open to the Government to fill up post of Vice-Chairman and Managing Director, keeping in view the administrative exigencies.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Dated: 2nd February, 2007.
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